

NEW ISSUE

CHAPTER 3

REVIEW OF OFFICER INVOLVED SHOOTINGS

BACKGROUND

When the Office of the Independent Police Auditor was established, certain duties were clearly specified while others emerged with the passage of time. One of the primary duties involves the review of all citizen complaint investigations alleging unnecessary use of force. In order to insure that the investigation of this type of complaint remained a priority, the IPA's policies and procedures were drafted to specifically require that 100% of the use of force investigations be audited. Only 20% of all other type of complaints require audits.

Officer involved shootings are the most serious type of force used by San José Police Officers.

Whenever this type of incident occurs, there is consternation

and questions raised not just by the people immediately affected but also from our city and community leaders, the entire law enforcement community and from the public at large. Interest on how police work impacts the citizenry is heightened following these incidents. During this time, the IPA receives many inquiries from the media and others looking for some answers or reasons why this happened. There appears to be an inherent expectation from the community that these serious cases will receive an independent review by the IPA. However, this is not the case because not all officer involved shootings result in the filing of a citizen complaint. Without a citizen complaint, the IPA does not have the authority to audit officer involved shooting investigations.

INVESTIGATIVE PROCESS

When a death or injury results from a police shooting, the

criminal investigation unit of the San José Police Department become the lead investigators along with a representative from the District Attorney's office. The focus of this investigation is to determine if the shooting was legally justified, or if the officer's actions violated the law. At the same time a representative from the PSCU monitors the investigation to determine if the officer's conduct violated department policy. The PSCU investigator does not question the officers during the time that the criminal investigation is ongoing. However, once the criminal investigation is completed, the PSCU will conduct their own investigation because a police officer may be found to be legally justified but may still be in violation of department policy. The PSCU will review the officer's actions to determine if the shooting was within policy, if the tactics surrounding the shooting were

consistent with current training, if changes or modifications in training are needed, or to affirm that the procedures used in the particular shooting were appropriate and consistent with the direction the police department is heading. The fact that a review of the officer's actions is conducted by the PSCU does not in and of itself indicate any wrongdoing on the part of the officer.

PROBLEM STATEMENT

The IPA can intake a citizen complaint involving an officer involved shooting and then monitor the investigation and ultimately audit the completed investigation. However, when an officer involved shooting happens, more often than not, the injured party or family of the deceased files a civil action instead of a complaint. Attorneys will often counsel their clients not to talk to anyone until after adjudication of their case.

Sometime later, a complaint may be filed but by then years have gone by making it more difficult to conduct a thorough investigation. On at least two complaints filed, the shootings had occurred more than two years prior. Other than the police officers, most of the civilian witnesses were unavailable. With the passage of time memories wane and physical evidence vanishes.

STATISTICS

A review of the last six years show that San José Police Officers have been involved in thirty-three incidents where an individual was wounded or killed. Of these 33 shootings, thirteen have resulted in the death of the suspect and in 20 others the suspect was wounded. In 1993, there were five suspects killed and one wounded. In 1994, there were four suspects killed and five wounded. In 1995, there were four wounded and zero

deaths. In 1996, there was one suspect killed and three wounded. In 1997, there were three suspects killed and five wounded. In 1998, there were zero deaths and two wounded.

Of the 13 deaths only three complaints were filed and of the 20 wounded only two filed a citizen complaint. In the last three years there have been no citizen complaints filed even though there were 14 officer involved shootings resulting in four deaths and ten wounded.

CITIES WITH CIVILIAN OVERSIGHT OF POLICE SHOOTINGS

A study of various cities which have civilian oversight of their police department was conducted to inquire whether they are involved in investigating or in reviewing the investigation and whether the filing of a complaint is a pre-requisite for looking into injuries or deaths resulting from police enforcement actions.

San Francisco, CA: In cases involving injury or death, the San Francisco Police Department Homicide Unit and the city's Management Control Division undertake an immediate investigation. The Chief of Police prepares a summary of each officer involved shooting for review by the Police Commission. This summary describes the incident, any disciplinary, training or other action taken by the Department in response, and any proposal for changes in Department policy. This summary is a public record. The Chief sends a copy of the completed Management Control Division investigation and the Chief's summary to the Director of the Office of Citizen Complaints (OCC). The Director of the Office of Citizen complaints reviews the investigation and the Chief's summary and recommends any further action including an independent investigation

when the Director concludes it is warranted. A summary of the OCC Director's recommendations is public record. The Police Commission reviews the Chief's summary and the Office of Citizen Complaints Director's recommendation and takes action as deemed appropriate. No report, that is made public, discloses the officer's identity or any other information deemed confidential by law. The filing of a complaint is not required.

San Diego, CA: When an officer involved shooting occurs, the following steps are taken. The homicide division of the San Diego Police Department, the Internal Affairs Unit and the District Attorney's Office all conduct separate investigations. The homicide and Internal Affairs investigations are forwarded to the Chief of Police. The District Attorney reviews all three investigations and prepares a report.

The District Attorney and Chief of Police send their final reports to the Citizens Review Board on Police Practices (CRBPP). The CRBPP can request added investigation from the Chief prior to making a decision on whether they agree or disagree with the finding. If the CRBPP disagrees with the Chief then both the Chief and the CRBPP present their case to the City Manager for final disposition. The filing of a complaint is not required.

preparing his report to the Police Commission. The Police Commission's staff prepares a second report. The staff will review the criminal investigation, the investigation by the Use of Force Review Board, the Chief of Police report to the Police Commission before preparing and submitting their findings and recommendations. The Police Commission makes the final determination on whether the shooting was justified. No citizen complaint is required.

Los Angeles, CA: Subsequent to a shooting involving a member of the LAPD, the Board of Police Commission is presented with two reports and recommendations. One of these reports comes from the Chief of Police who convenes a "Use of Force Review Board" which is charged with conducting an investigation into the tactics, justification and appropriateness of the shooting. The Chief can either accept or reject these findings in

Santa Cruz, CA: The Citizen Police Review Board (CPRB), which was established the same year as the IPA, currently has no authority to review police-involved shootings. However, on June 9, 1998, the CPRB submitted amendments to the CPRB Ordinance for approval to the Santa Cruz City Council regarding the reviewing of all police-involved shootings without the need for a citizen complaint.

Tucson, Arizona: The City of Tucson studied and adopted the San José IPA model for their police oversight program. The Tucson IPA's policies and procedures don't specifically address the IPA's jurisdiction concerning officer involved shootings. However, as a matter of practice, in Tucson, the police notify the Independent Police Auditor upon the occurrence of an officer involved shooting. The Auditor, at her discretion, can go to the scene and observe the investigation. The Auditor receives information regarding the incident during the investigation and audits the investigation after the case is closed. There is no requirement that a citizen complaint be filed.

Albuquerque, NM: The San José IPA model adopted some of its policies and procedures from the Albuquerque model. In Albuquerque, the Independent Counsel who is a contract

attorney to the city provides police oversight. He reviews all the investigations concerning officer involved shootings and makes recommendations pertaining to changes in police department policy, procedure and/or training to the city council.

County of San Diego: The Citizen's Law Enforcement Review Board (CLERB) receives and independently investigates deaths and citizen complaints of misconduct involving Deputy Sheriffs. The CLERB's findings are submitted to the Board of Supervisors. . There is no requirement that a citizen complaint be filed.

CONCLUSION

An analysis of the information above revealed that major cities like San Francisco, Los Angeles and San Diego do not rely on the filing of a citizen complaint to examine and/or conduct a separate investigation following

an officer involved shooting.

Currently, the IPA's involvement has consisted of notification and briefing by the PSCU Commander whenever a death or serious injury results from a police enforcement action. On one occasion the IPA was invited to observe the scene of an officer involved shooting and also had an opportunity to talk to the investigators conducting the investigation.

The PSCU monitors and reviews all the officer involved shooting investigations conducted by the SJPd Bureau of Investigations for administrative violations.

Only those investigations where a complaint has been filed are forwarded to the IPA for review.

There are several reasons why the IPA should review all officer involved shootings regardless of whether a complaint is filed.

First, when citizens are wounded

or killed by police enforcement actions, it affects more than the individuals shot. The community at large is impacted. No other public servants are given the authority to, in a split second, take someone's life. Therefore, the residents of San José individually and collectively have a vested interest in having someone other than the police examine these shootings from a non-law enforcement perspective. The passage of Measure E² in 1996 by an overwhelming majority in each council district clearly indicated that the will of the people is to have oversight of police practices. There is no other more serious police practice than the application of deadly force. Therefore, civilian oversight by the IPA should not be dependent on the filing of a complaint because this type of enforcement action affects not just the parties involved, it affects the entire community.

² See Appendix I

Secondly, communities that have civilian oversight of officer involved shootings report that residents feel more confident in the outcome of the police investigations when those cases are reviewed from a civilian perspective also. In order to maintain a balance between the need for officer safety and the safety of citizens coming in contact with the police, an ongoing review of police policies and procedures is needed. The lack of oversight of those cases where a complaint is not filed reflects negatively on both the IPA and the SJPD because it gives the appearance that the IPA is failing to provide oversight to the most serious use of force cases and/or that the SJPD is hiding or withholding information. The request to audit officer involved shootings for violations of policies and procedures should not be construed as an indictment of the San José Police Department. This request

is an effort to provide a process by which the most serious cases, which affect the community at large, receive civilian oversight.

RECOMMENDATION

The IPA should review the administrative investigation of all officer involved shootings where a person was wounded or killed whether or not a complaint is filed.